(3)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No. 3977 2003

PETITIONER : Yashwant Kumar Bhardwaj, aged 44 years,
s/o Shri Neerang Singh Bhardwaj
Upper Division Teacher,
Chandrashekhar Azad Hr. Secondary School,
Panchsheelnagar, Durg (C.G.).

Versus.

RESPONDENTS : (1) Municipal Corporation, Durg,
Through - Commissioner,
Municipal Corporation, Durg.

(2) State Govt. of Chhattisgarh
Through - Secretary School Education,
Secretariate, D.K.S. Bhawan,
RAIPUR.

P.R No. 3773/03
Presented by Shri Vijay Shrivastava
dated 8-12-03

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

The petitioner

(45) AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3977 of 2003

Petitioner — Yashwant Kumar Bhardwaj

Versus

Respondents — Municipal Corporation, Durg & another

Post for order on 3rd April, 2006.

J U D G E
3 .4.2006

(46)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3977 of 2003

Petitioner — Yashwant Kumar Bhardwaj

Versus

Respondents — Municipal Corporation, Durg & another

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Ajay Shrivastava, counsel for the petitioner.

Miss Sharmila Shinghai, counsel for the respondent No. 1.

Smt. Anju Ahuja, Deputy Government Advocate for the respondent No. 2/State.

ORDER

(03rd April, 2006)

The petitioner, being aggrieved by the non-payment of two advance increments, for having obtained B.Ed. examination certificate at his own cost, has filed this petition seeking a writ/direction that the respondents be directed to grant two advance increments to the petitioner from the date, the petitioner obtained B.Ed. examination certificate and to make the payment of arrears w.e.f. 13.1.1997. It is further prayed that the impugned order dated 24.9.2003 (Annexure P/1), whereby the petitioner was denied the benefit of two advance increments be quashed.

2. The facts in nutshell are that the petitioner was employed as Upper Division Teacher in Chandrashekhar Azad Higher Secondary School, Municipal Corporation, Durg. The petitioner obtained B.Ed. examination certificate at his own cost on 13.1.1997 (Annexure P/6). The petitioner claims entitlement of two advance increments as per the Circular No. F.7-44/96/20-4 dated 24.12.1998 (Annexure P/3) on obtaining B.Ed. examination certificate.

(47)

3. The respondent No. 1 by impugned letter dated 24.9.2003 (Annexure P/1) informed to the petitioner that the petitioner would not be granted two advance increments as only those Assistant Teachers are entitled to the benefit of two advance increments, who had obtained B.Ed/B.T.C. training certificate between the period of 23.10.1964 to 7.5.1973 at their own cost. The petitioner has obtained B.Ed. examination certificate later on.

4. Shri Ajay Shrivastava, learned counsel appearing for the petitioner submitted that the petitioner is entitled to the benefit of two advance increments, after having obtained B.Ed. examination certificate in January, 1997, in accordance with the provisions of the circular dated 24.12.1998 and the impugned order dated 24.9.2003 is contrary to the law and deservers to be quashed.

5. Miss Sharmila Shinghai, learned counsel appearing for the respondent No. 1, per contra, submitted that subsequent circular dated 1.3.1999 makes it clear that only those Assistant Teachers are entitled to the benefit of two advance increments, who had obtained B.Ed./B.T.C. training certificate on their own cost during the period from 23.10.1964 to 7.5.1973. It was further contended that the circulars are applicable to only Assistant Teachers, not to Upper Division Teacher. The petitioner is a Upper Division Teacher and having not obtained B.Ed. examination certificate between the period of 23.10.1964 to 7.5.1973, is not entitled to two advance increments.

6. Having heard learned counsel for the parties and having perused the records, it is found that the first circular dated 24.12.1998 was passed in compliance of the order dated 22.7.1996 passed by Hon'ble the Supreme Court in Civil Appeal No. 9895 of 1996 **State of M.P. and another Vs. Badrinarayan Acharya and others** ((1996) 10 Supreme Court Cases

(46)

271}, wherein the Supreme Court, while interpreting the circular dated 20.10.1994, has observed as under :-

> "4. It is seen that the order is explicit as under:
> As per Finance Department's Memo No. 16333-CR-1892-I VRI dated 22-10-1964, the advance increments are to be allowed only to those government servants who have received training at their own costs and government servants deputed for training at government expenses are excluded from the grant of advance increments. These orders have not been given retrospective effect but they come into force from the date of issue of orders. Accordingly anyone who proceeded for training up to 22-10-1964 whether at his cost or at government cost, will be eligible to the concession. Those who proceeded on training on or after 23-10-1964 can get the concession only if the training is at his own cost and not at the cost of the Government.
> 5. A reading thereof would clearly indicate that such of those in service who had gone on training to improve their qualifications at the government expenses, would not be eligible for two advance increments while those who had gone on training at their own expenses, would be eligible for two advance increments within the stipulated period mentioned in the order....."

The circular dated 24.12.1998 (Annexure P/3) provides that all the teachers, not assistant teachers alone, as contended by learned counsel for the respondent No. 1, would be entitled to two advance increments on obtaining B.Ed. examination certificate after 22.10.1964. The circular does not prescribe outer limit of the period for obtaining B.Ed, M.Ed., B.T.I. training certificate. The said circular reads as under :-

मध्यप्रदेश शासन
स्कूल शिक्षा विभाग,
मंत्रालय
वल्लभ भवन भोपाल–462004.

कमांक एफ. 7–44/96/20–4 भोपाल दिनांक 24.12.98

(49)

प्रति,

आयुक्त,
लोक शिक्षण,
म.प्र. भोपाल।

विषय :— स्वयं के व्यय पर बी.एड.,एम.एड., बी.टी.आई. आदि प्रशिक्षण प्राप्त करने पर अग्रिम वेतन वृद्धि देने के संबंध में।

राज्य शासन द्वारा मान. उच्चतम न्यायालय में दायर एस.एल.पी. कमांक 9895 के निर्णय दिनांक 22.7.96 के परिपालन में 22.10.64 तक सभी ऐसे शिक्षकों को दो वेतन वृद्धियॉ देय होंगी जो स्वयं अथवा शासकीय व्यय पर प्रशिक्षित हैं एवं 22.10.64 के बाद केवल स्वयं के व्यय पर प्रशिक्षण प्राप्त शिक्षकों को दो वेतन वृद्धि देने की स्वीकृति प्रदान की जाती है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
हस्ता/—
(आर.पी.वर्मा)
अवर सचिव
म.प्र.शासन, स्कूल शिक्षा विभाग

8. The circular dated 1.3.1999, relied on by learned counsel for the respondent No. 1, clarified the circular dated 24.12.1998 to the effect that the period of 23.10.1964 to 7.5.1973 for obtaining B.Ed./B.T.C. examination certificate will be applicable to only Assistant Teachers, not to other teachers. The present petitioner is a Upper Division Teacher. It has been clarified by order dated 16.8.1983 of the School Education Department, Government of Madhya Pradesh (Annexure R/2) that Lower Division Teachers have been redesignated as Assistant Teacher and Upper Division Teachers have been redesignated as Teachers.

9. The circular dated 1.3.1999 reads as under :-

"अ. 22—10—64 के पूर्व शासकीय व्यय पर अथवा स्वयं के व्यय पर सहायक शिक्षक के रूप में प्रशिक्षण प्राप्त शिक्षकों को दो अग्रिम वेतन—वृद्धियॉ पूर्व आदेशानुसार यथावत स्वीकृत रहेंगी; तथा

(50)

ब. उक्त आदेश उन सहायक शिक्षकों के लिए लागू हैं जिनके द्वारा बी.एड. /बी.टी.सी. प्रशिक्षण स्वयं के व्यय पर दिनांक 23–10–64 से 7–5–73 की अवधि में शासकीय सेवा में रहते हुए पूर्ण किया हो।

(स्कूल शिक्षा वि.क.एफ.–7–44/96/20–4 दिनांक 1–3–1999)

10. On perusal of the above stated circulars, it is explicit that the circular dated 1.3.1999 is applicable to only Assistant Teachers (Lower Division Teachers) and not to other Teachers (Upper Division Teachers). The present petitioner is not governed by the circular dated 1.3.1999. The circular dated 24.12.1998 is still in force with modification and the circular dated 24.12.1998 would be applicable to all the Teachers including Upper Division Teachers. The circular is very clear to the effect that all the Teachers, who have obtained B.Ed., M.Ed., B.T.I. etc. training certificate are entitled to two advance increments.

11. In the present case, the petitioner, who has obtained B.Ed. examination certificate on 13.1.1997, is squarely governed by the circular dated 24.12.1998.

12. For the aforesaid reasons, the petitioner is entitled to the payment of two advance increments from the date of declaration of his B.Ed. examination result. The respondents are accordingly directed to make the payment of two advance increments to the petitioner w.e.f. 13.1.1997 till date, within a period of two months from today.

13. The petition is accordingly allowed to the above extent. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu